

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

CARL HARRISON,

Movant,

v.

CIVIL ACTION NO. 2:08-cv-00103
(Criminal No. 2:97-cr-00143-04)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Carl Harrison, pro se, (Petitioner) brings this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2255. On February 13, 2009, this Court referred Petitioner's habeas application [Docket 339] to Magistrate Judge Mary Stanley for proposed findings of fact and a recommendation (PF&R). On September 15, 2009, Magistrate Judge Stanley issued a PF&R recommending the dismissal of Petitioner's application with prejudice [Docket 394] because his application is moot. Magistrate Judge Stanley further found dismissal appropriate because Petitioner would otherwise not have been entitled to any review since his application constituted an unauthorized second or successive motion under 28 U.S.C. § 2255.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of de novo review and the petitioner's right to appeal this Court's order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v.*


Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Stanley's PF&R were due on September 29, 2009, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Accordingly, the Court hereby (1) **ADOPTS** Magistrate Judge Stanley's PF&R in its entirety [Docket 394], (2) **DISMISSES** Petitioner's Motion to Vacate, Set Aside or Correct Sentence [Docket No.339] with prejudice, and (3) **DIRECTS** the Clerk to remove this action from the Court's active docket. A separate judgment order will enter this day, implementing the rulings contained herein.

IT IS SO ORDERED.

This Court further **DIRECTS** the Clerk to provide a copy of this Order to all counsel of record, Petitioner, pro se, and Magistrate Judge Stanley.

ENTER: October 9, 2009



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE